

Commitments for the UP Commerce Railyard

The Air Resources Board (ARB) requests additional commitments from Union Pacific Railroad (UP) to further reduce diesel particulate matter (PM) emissions at the UP Commerce Railyard between 2010 and 2020.

If UP fails to 1) achieve the Table 1 diesel PM emission reduction levels in 2011, 2013, 2015, 2017, or 2020; or 2) provide comprehensive or interim diesel PM emission inventories, air dispersion modeling, or emission reduction plans in compliance with the schedule in Table 2; ARB will initiate rulemakings as specified in Section 9. The commitments, and ARB oversight, will ensure that the UP Commerce Railyard diesel PM emission levels are achieved, verifiable, and enforceable.

Summary of Commitments for the UP Commerce Railyard:

UP commits to do the following at this railyard:

- Reduce 2005 diesel PM emissions from railyard operations by at least 50 percent by 2011, increasing the reductions to at least 85 percent by 2020, with intermediate commitments for emission reductions in calendar years 2013, 2015, and 2017 to ensure steady progress. UP commits to fully implement existing U.S. EPA and ARB regulations and agreements and to initiate any additional actions needed to meet the diesel PM emission reduction levels on the stated schedule. This commitment will be met irrespective of any increase in activity or growth at the UP Commerce Railyard through 2020.
- Ensure that any additional switch or medium horsepower locomotives that operate within the railyard (more than 25 percent of annual hours or 25 percent of annual miles traveled or 25 percent of annual diesel fuel consumption) meet emission levels of 3.0 g/bhp-hr NO_x or less and emissions of 0.1 g/bhp-hr PM or less (over the U.S. EPA line-haul duty cycle).
- By December 31, 2012, assess and provide recommendations, if any, for implementation of those changes in railyard operations that can significantly reduce railyard diesel PM emissions, or changes in the location of the emission sources that can reduce health risk, and meet all other specified criteria as articulated in Section 6.
- Beginning one month after UP's acceptance of these commitments, identify any non-preempted switch or medium horsepower locomotive that operates more than five consecutive calendar days within the railyard and subsequently report this information to ARB with UP's annual reports pursuant to the 1998 Locomotive NO_x Fleet Average Agreement.

- Prepare and submit railyard diesel PM emission inventories, air dispersion modeling analyses, and emission reduction plans in each year specified in Table 2.
- Work collaboratively with ARB to provide ongoing communication of railyard diesel PM emission reduction progress to the public through annual local community meetings and fact sheets.

As part of a broader initiative, UP commits to:

- Work collaboratively with ARB to develop and implement a formal demonstration program for advanced locomotive engines or aftertreatment devices by December 31, 2015. The objective of the locomotive demonstration program will be to support separate, but potentially parallel, efforts to achieve ARB verification of one or more advanced locomotive engines or aftertreatment devices for ultra low emitting switch and medium horsepower locomotives to achieve emission levels that are equal to or less than U.S. EPA Tier 4 NO_x and/or PM emission standards.
- Loan two existing genset switch or medium horsepower locomotives annually through 2015 and provide any necessary technical assistance as UP's in-kind contribution to support the demonstration program. If the demonstration program is completed prior to 2015, UP's obligation to make these locomotives available would be satisfied as of the completion date.

ARB commits to:

- Install and operate one particulate matter (PM_{2.5}) ambient air quality monitor near the UP Commerce and BNSF Hobart Railyards, to assess trends and supplement the existing regional monitoring network; or secure a commitment from the South Coast Air Quality Management District to do so, consistent with a siting and operation protocol supported by ARB.
- Prepare periodic health risk assessments (HRAs) as indicated in Table 3 for the railyard using the comprehensive railyard diesel PM emission inventories and air dispersion modeling analyses submitted by UP. Also, to prepare periodic estimates of future health risks, through 2020, concurrent with UP's submittal of final emission reduction plans.
- Review the emission inventories, air dispersion modeling, and emission reduction plans submitted by UP to determine the sufficiency of the information provided and notify UP of any deficiencies.
- Determine compliance with the diesel PM emission reduction levels for each of the years specified in Table 1, based on the comprehensive inventories

submitted by UP and independent ARB verification through inspections, field surveys, and other mechanisms.

- Monitor UP's compliance with the commitments in this document, determine if UP has met its obligations, and if UP has failed to meet the commitments in specified sections, submit rulemakings for locomotives and railyards to the Board within four months from the date of any final determination.
- Support UP's efforts to assess options for operational changes with technical assistance to evaluate the potential impacts of such changes on health risk for the railyard.

1. What are the commitments to reduce diesel PM emissions?

UP shall meet the diesel PM emission reduction levels at the UP Commerce Railyard by the specified compliance deadlines set forth in Table 1. To meet the 85 percent reduction level, ARB staff estimates that the railyard diesel PM emissions of 12.1 tons per year in 2005 will need to be reduced to about 1.8 tons per year by 2020.

Typical emission sources within the railyard affected by the diesel PM emission reduction levels in Table 1 include interstate line haul locomotives, switch and medium horsepower locomotives, drayage trucks, cargo handling equipment such as cranes and yard hostlers, transport refrigeration units operated with drayage trucks or railcars, and stationary engines and maintenance equipment. Passenger locomotive emissions are excluded from the calculation of the railyard diesel PM emissions used to determine compliance with Table 1.

Table 1
Diesel PM Emission Reduction Levels and Schedule for
UP Commerce Railyard

Diesel PM Reductions From 2005 Baseline*	Compliance Deadline
50 percent	December 31, 2011
55 percent	December 31, 2013
65 percent	December 31, 2015
70 percent	December 31, 2017
85 percent	December 31, 2020

* If, after the effective date of this program, ARB adjusts either the stringency or the effective date of ARB regulations affecting non-locomotive diesel PM emission sources at railyards, the diesel PM emission reduction levels will be adjusted by the ARB accordingly.

ARB staff will use the emissions inventory reported in the 2005 Health Risk Assessment as the 2005 baseline, together with the comprehensive emission inventory submittals for subsequent years, to determine compliance with the Table 1 emission reduction levels. ARB staff will validate the inventory information through ongoing ARB railyard inspections, ARB field surveys, and ARB tracking of locomotive and railyard operations.

2. Does growth change the commitments to reduce diesel PM emissions?

No. UP commits to reducing diesel PM emissions from the UP Commerce Railyard by at least 85 percent by 2020 and meeting the intermediate levels in Table 1, regardless of the potential increases in railyard activity levels, such as the number of container lifts.

3. How can UP reduce railyard diesel PM emissions 85 percent by 2020?

ARB's supporting analysis for feasible emission reductions at UP Commerce Railyard is located in a separate document entitled: *Basis for Proposed Commitments to Reduce Diesel Particulate Matter at the UP Commerce Railyard (Basis for Proposed Commitments: May 2010)*. This *Basis for Proposed Commitments* document describes possible options that could be implemented to achieve the Table 1 diesel PM emission reduction levels.

In 2005, the railyard generated an estimated 12.1 tons per year of diesel PM emissions from freight operations. ARB staff estimates that existing U.S. EPA and ARB regulations and agreements will reduce diesel PM emissions at the railyard down to about 3.2 tons per year by 2020 (a 74 percent reduction). ARB staff estimates that UP can further cut the railyard diesel PM emissions by 1.4 tons per year by 2020 (achieving an 85 percent reduction compared to 2005 levels).

4. What are the railroad commitments to prepare and submit emission inventories, air dispersion modeling, and emission reduction plans? What are the ARB commitments to publicly release the railroad documents and health risk assessments?

Table 2 shows the schedule for UP to submit the railyard diesel PM emission inventories, air dispersion modeling, and draft and final emission reduction plans. Table 3 identifies the dates by which the ARB will release the railyard diesel PM emission inventories, air dispersion modeling, health risk assessments, and the emission reduction plans for public review.

Table 2
UP Commerce Railyard
Schedule for UP Submittal of Documents:
Emission Inventories, Air Dispersion Modeling,
and Emission Reduction Plans

Railyard Operations Year	Emission Inventory ^a	Air Dispersion Modeling	Draft Emission Reduction Plan	Final Emission Reduction Plan
2009	Sep 30, 2010 (I)	-----	Oct 15, 2010	Dec 31, 2010
2010	Apr 1, 2011 (I)	-----	Sep 1, 2011	Dec 31, 2011
2011	Apr 1, 2012 (C)	Jun 1, 2012	-----	-----
2012	Apr 1, 2013 (I)	-----	Sep 1, 2013	Dec 31, 2013
2013	Apr 1, 2014 (C)	Jun 1, 2014	-----	-----
2014	Apr 1, 2015 (I)	-----	Sep 1, 2015	Dec 31, 2015
2015	Apr 1, 2016 (C)	Jun 1, 2016	-----	-----
2016	Apr 1, 2017 (I)	-----	-----	-----
2017	Apr 1, 2018 (C)	Jun 1, 2018	Sep 1, 2018	Dec 31, 2018
2018	Apr 1, 2019 (I)	-----	-----	-----
2019	Apr 1, 2020 (I)	-----	-----	-----
2020	Apr 1, 2021 (C)	-----	-----	-----

^a (C) = Comprehensive Emission Inventory. (I) = Interim Emission Inventory.

Table 3
Schedule for ARB Release of Documents:
Emission Inventories, Air Dispersion Modeling,
ARB Health Risk Assessments and Emission Reduction Plans

Railyard Operations Year	Railroad Emission Inventory^a	Railroad Air Dispersion Modeling	ARB Health Risk Assessment	Railroad Draft Emission Reduction Plan	Railroad Final Emission Reduction Plan^b
2009	Oct 15, 2010 (I)	-----	Nov 15, 2010 ^c	Nov 1, 2010	Jan 15, 2011
2010	Apr 15, 2011(I)	-----	-----	Oct 1, 2011	Jan 15, 2012
2011	Apr 15, 2012 (C)	Jun 15, 2012	Oct 1, 2012	-----	-----
2012	Apr 15, 2013 (I)	-----	-----	Oct 1, 2013	Jan 15, 2014
2013	Apr 15, 2014 (C)	Jun 15, 2014	Oct 1, 2014	-----	-----
2014	Apr 15, 2015 (I)	-----	-----	Oct 1, 2015	Jan 15, 2016
2015	Apr 15, 2016 (C)	Jun 15, 2016	Oct 1, 2016	-----	-----
2016	Apr 15, 2017 (I)	-----	-----	-----	-----
2017	Apr 15, 2018 (C)	Jun 15, 2018	Oct 1, 2018	Oct 1, 2018	Jan 15, 2019
2018	Apr 15, 2019 (I)	-----	-----	-----	-----
2019	Apr 15, 2020 (I)	-----	-----	-----	-----
2020	Apr 15, 2021 (C)	-----	-----	-----	-----

^a (C) = Comprehensive Emission Inventory. (I) = Interim Emission Inventory.

^b Concurrent with the release of the final emission reduction plan, ARB staff will provide a brief supplemental document that estimates the health risk for future compliance years.

^c ARB will estimate the health risk for the 2009 calendar year based on the 2009 interim inventory and the 2005 Health Risk Assessment data.

a. Railyard Diesel PM Emission Inventories

i. Comprehensive Diesel PM Emission Inventories

UP commits to prepare the comprehensive diesel PM emission inventories for calendar year 2011, 2013, 2015, 2017, and 2020. UP will prepare each comprehensive diesel PM emission inventory for the railyard in accordance with *ARB Railyard Emission Inventory Methodology* (2006) or its subsequent revisions, using data for the whole of the preceding calendar year. The comprehensive diesel PM emission inventories will include, to the extent reasonably available, detailed activity information such as locomotive event recorder data, hours of operation for cargo handling equipment and transport refrigeration units, and drayage truck time in operation within the railyard. The comprehensive inventory will also identify activity and growth projections through 2020, and the basis for those projections.

ii. Interim Diesel PM Emission Inventories

UP commits to prepare interim diesel PM emission inventories for the railyard for calendar years 2009, 2010, 2012, 2014, 2016, 2018, and 2019, using data for the whole of the calendar year. The interim emission inventories will identify and utilize updates on locomotive usage, other equipment changes, and activity levels (e.g., number of lifts, drayage truck activities, locomotive shop releases, if applicable) to quantify changes to the last comprehensive diesel PM emission inventory. ARB staff will use the interim emission inventories to consider if there are any potential issues with UP continuing to make sufficient progress in order to meet the railyard diesel PM emission levels specified in Table 1.

b. Air Dispersion Modeling

UP commits to prepare air dispersion modeling based on the schedule in Table 2. Air dispersion modeling is to be performed in accordance with *ARB Health Risk Assessment Guidance for Railyard and Intermodal Facilities* (2006) or its subsequent revisions. UP also commits to provide source apportionment data for receptors defined in the air dispersion model and a source contribution analysis. UP also commits to analyze the impacts on the modeled air concentrations from significant updates to the modeling methodology, such as the current version of AERMOD model from U.S. EPA, the availability of updated meteorological data, or any other modeling parameters or inputs which could substantively affect the modeling estimations.

c. Health Risk Assessments

ARB staff commits to prepare health risk assessments using the comprehensive diesel PM emission inventories and air dispersion modeling results. The risk assessments are to be prepared in accordance with *ARB Health Risk Assessment Guidance for Railyard and Intermodal Facilities* (2006) or its subsequent revisions. The updated risk assessments will provide detailed information comparing excess cancer risks and

non-cancer health effects with the estimates in the 2005 Health Risk Assessment. ARB staff will compare 2005 railyard emissions and associated health effects with risk assessment results for later years using the same or similar methodology, and also include a separate analysis for any subsequent changes in future year methodologies. ARB staff will complete the health risk assessment reports for the railyard according to the schedule provided in Table 3.

ARB also commits to prepare periodic estimates of future health risks through 2020, concurrent with UP's submittal of final emission reduction plans.

d. Emission Reduction Plans

UP commits to submit draft and final emission reduction plans according to the schedule in Table 2. The emission reduction plans are to be based on the most recent railyard diesel PM emission inventories. The purpose of the plans is for UP to detail the actions it will take to reduce railyard emissions down to the levels shown in Table 1 for the next compliance deadline, and the range of potential actions it intends to pursue for subsequent compliance deadlines. The emission reductions plans will document existing and projected railyard diesel PM emissions through 2020 (accounting for growth), describe changes in source category activities, identify existing and future actions to cut emissions and provide specific implementation schedules for these actions.

e. ARB Review

i. Diesel PM Emission Inventories and Air Dispersion Modeling

Within 20 calendar days of receipt of a railyard comprehensive or interim diesel PM emission inventory, or air dispersion modeling, ARB shall review the submission for completeness and accuracy and shall notify UP of its findings. If ARB determines that the submission is not complete and accurate, it shall, within the above 20-day time period, notify UP in writing of any deficiency and the reasons therefor.

Upon receipt of a notice of deficiency from ARB, UP shall within 15 calendar days correct the deficiencies and resubmit the submission to ARB. Within 10 calendar days, ARB shall notify UP as to whether the submission is complete and accurate. If not, ARB shall make a preliminary determination of non-compliance following the procedures set forth in Section 9.b.ii below.

ii. Emission Reduction Plans

Within 30 calendar days of receipt of a draft railyard emission reduction plan, ARB shall review the plan for completeness and accuracy and shall notify UP of its findings. If ARB determines that the draft plan is not complete and accurate, or that the draft plan, in the ARB staff's opinion, cannot reasonably achieve the diesel PM reductions required

by the next compliance deadline as set forth in Table 1, ARB shall, within the above 30-day time period, notify UP in writing of any deficiency and the reasons therefor.

Within 30 calendar days of receipt of the final plan, ARB shall notify UP as to whether the plan is complete, accurate, and can reasonably achieve the diesel PM emission reductions required by the next compliance deadline as set forth in Table 1. If not, ARB shall make a preliminary determination of non-compliance as set forth in Section 9.b.ii below. Subsequently, if the administrative appeals panel fully or partially affirms the finding of the ARB staff, UP shall have 30 calendar days to submit to the ARB a revised final plan for the next compliance deadline to cure any deficiencies upheld by the panel. If UP fails to submit a revised final plan or if the ARB staff determines the revised final plan is still deficient, the ARB may immediately commence the rulemaking process outlined in the opening paragraphs of Section 9.

f. Commitment to Follow Through on Final Emission Reduction Plan

UP will take the necessary actions identified in the final emission reduction plan in accordance with the plan's implementation schedules to meet the diesel PM emission reduction levels for the next compliance deadline as set forth in Table 1. If UP determines that alternative actions not identified in its most recent plan should be implemented to achieve the emission reduction levels for a compliance deadline, and the alternative actions materially alter the pathway for achieving the emission reductions in the plan, UP shall within 15 days of its determination notify ARB of the alternative actions and the reasons for the changes.

5. What is the commitment for public meetings and outreach?

UP commits to hold a public meeting no later than December 15 of each year with members of the surrounding community following the release of the most current health risk assessment and/or draft emission reduction plan as specified in the Table 3 schedule. At the public meeting, UP and ARB staff will seek public input on the available documents prior to ARB final determination on the emission reduction plan.

6. What is the commitment to assess options for operational changes?

UP commits to assess the potential to relocate operations within the same facility, or to modify various railyard operations to reduce diesel PM emissions or exposure. UP will assess potential changes including:

- Relocation of the locomotive maintenance and service facilities, including associated essential idling emissions.
- Installation of a stationary collection system to reduce locomotive maintenance and service related emissions.
- Electric infrastructure to support operation of rail mounted gantry cranes.
- Relocation of diesel-fueled yard tractors.

UP will conduct this one-time operational review considering, among other things, the potential diesel PM emissions reductions that could be achieved, the technical feasibility of such actions, the operational impacts on the railyard's throughput velocity and fluidity, the availability of land and access, the costs and cost-effectiveness of such actions, and any railyard-specific factors. Each operational option will be analyzed, and recommendations, if any, for implementation completed as soon as possible for this railyard, but in any case not later than December 31, 2012. UP will provide the assessment of operational changes to ARB, and ARB will make the assessment publicly available.

ARB commits to support these efforts with technical assistance and to evaluate the impacts of each potential operational change on the maximum individual cancer risk (MICR) for the railyard.

7. Will UP be able to access incentive funding to support these commitments?

UP, to the extent feasible, will compete for federal, state, local, and private incentive funding to supplement its capital expenditures, and to accelerate further diesel PM and NOx emission reductions at this railyard.

Consistent with State law and Board policies, ARB staff will support efforts by UP to seek a mix of federal, state, and local incentive funding to accelerate UP's ability to meet the diesel PM emission reduction levels for the railyard.

8. What are the provisions for UP and ARB to meet and confer by 2018?

UP agrees to meet and confer with ARB by 2018 to evaluate and explore opportunities for further diesel PM emission reductions by 2020 and beyond.

9. What are the mechanisms for ARB to enforce these commitments? What would trigger ARB to initiate regulatory action?

Upon a final determination of the ARB Executive Officer, or if appealed, of the dispute resolution panel, that UP has failed to meet its commitments set forth herein at Sections 1, 2, 4, 5, and 6, the ARB commits to submit to the Board within four months from the date of the determined failure the following locomotive and railyard rulemakings:

- A regulation of switch and medium horsepower locomotives that are not preempted under federal law (e.g., locomotives that primarily operate in California and that were manufactured prior to 1973 or that exceed 133 percent of their useful life since original manufacture or last remanufacture, whichever is later).
- A designated railyard regulation that requires risk reduction audits and plans to achieve targeted emission reduction levels.

Nothing in this agreement precludes ARB from developing regulations within its authority to support State Implementation Plan and Climate Change Scoping Plan requirements.

ARB will also consider the following actions:

- Pursue federal legislation to expand ARB authority to adopt regulations for in-use locomotives.
- Petition U.S. EPA to strengthen existing federal locomotive regulations.

ARB is designated as the agency responsible for enforcement of the UP commitments. The enforcement authorities specified herein may only be exercised by ARB. UP may, at any time, initiate informal consultations with ARB to identify and resolve concerns or other issues regarding compliance with its commitments herein.

In determining whether UP has met its commitments, the parties agree to follow the following process.

a. ARB Verification of Railyard Diesel PM Emission Reduction Levels

To determine whether UP has met the UP Commerce Railyard diesel PM emission reduction levels specified in Table 1, ARB will review the comprehensive emission inventories and interim emission inventories in relation to information collected by ARB staff. ARB will conduct semi-annual railyard inspections, which will also be augmented by ARB photographic tracking and field surveys of railyard switch and medium horsepower locomotives. In addition, ARB staff will use the annual UP locomotive NO_x fleet average agreement submittals to verify the number and tier of interstate line haul locomotives operating within the South Coast Air Basin. ARB staff will also randomly conduct inspections of UP interstate line haul locomotives entering and exiting the South Coast Air Basin to help assess compliance with the Table 1 diesel PM emission reduction levels.

b. Preliminary Determination of Non-Compliance

i. Failure to Comply with the Railyard Diesel PM Emissions Reduction Levels

Within 30 working days of receipt of the comprehensive railyard diesel PM emission inventories, ARB shall make a written preliminary determination notifying UP as to whether UP met or failed to meet the diesel PM emission reduction levels specified in Table 1 for the previous year or was otherwise not in compliance. If ARB determines that UP has failed to meet its emission reduction levels, ARB shall within the same 30 working days provide UP with its written preliminary determination, which shall set forth the reasons for its findings. ARB shall, with the greatest precision possible based on data submitted by UP, calculate the difference between the railyard diesel PM emission reduction level reported by UP and the levels required in Table 1. ARB and UP shall

use their respective best efforts to expedite submission and review of the reports. The time periods provided for ARB to make a preliminary compliance determination may be extended by written agreement between ARB and UP.

Within 15 calendar days of receipt of ARB's preliminary determination that UP has failed to meet the emission reduction levels, UP may request to meet and confer with ARB and/or provide ARB with such information and analysis as UP believes appropriate to demonstrate its compliance with the Table 1 diesel PM emission reduction levels. If a meet and confer is requested, the parties shall meet within 10 working days of the request. Within 15 calendar days after receipt of UP's response or after meeting and conferring with ARB, ARB will review and consider the information provided by UP and make a final determination, in writing, as to whether UP has failed to meet the Table 1 diesel PM emission reduction levels.

For the Table 1 compliance deadlines in 2011, 2013, 2015, 2017, or 2020, if the ARB staff determines that UP missed its percentage target for the UP Commerce Railyard by not more than 2 percent (e.g., reaching a 63 percent compliance level where 65 percent was required), UP shall be given the opportunity to cure this deficiency by the next calendar year, provided it demonstrates the new compliance level by conducting a full inventory analysis. Failure to conduct the analysis or failure to cure the deficiency in the following calendar year will constitute a failure to meet the appropriate targets in Table 1.

ii. Failure to Comply with Other Railyard Commitments

If ARB makes a preliminary determination that UP has failed to meet any other of its commitments set forth herein, ARB shall notify UP, in writing, of its findings. Within 15 calendar days, UP may request to meet and confer with ARB and/or provide ARB with such information and analysis as UP believes appropriate to demonstrate its compliance. If a meet and confer is requested, the parties shall meet within 10 working days of the request.

Within 15 calendar days after receipt of UP's response or after meeting and conferring with ARB, ARB will review and consider the information provided by UP and make a final determination, in writing, as to whether UP has failed to meet any of its non-emission reduction-related commitments.

c. Final Determination by ARB of Non-Compliance

A final determination of non-compliance shall specifically identify the reasons why ARB has found UP not to be in compliance with agreed-upon commitments. A final determination of non-compliance for failure to meet the emission reduction levels set forth in Table 1 shall provide ARB's final calculations of the emission reduction levels of the UP Commerce Railyard. Findings of UP's failure to meet other commitments shall set forth in detail ARB's determination of why the commitments have not been met.

d. Dispute Resolution

In the event of a dispute concerning an ARB final determination of non-compliance or any of the parties' respective commitments, the party asserting the dispute shall provide notice to the other party and set forth the issues underlying the dispute. The parties shall meet and confer regarding the identified issues within 15 working days after receipt of notification, and if they cannot reach agreement within 15 working days after such consultation, shall submit their respective positions to an administrative appeals panel, which shall consider the matter as expeditiously as possible.

i. Composition of Administrative Appeals Panel

The panel shall be comprised of one member selected by ARB, one member selected by UP, and a third member selected by the initial two members from a list of five or more persons that the parties shall agree to within 120 calendar days of the parties' exchange of commitment letters. The list shall include persons qualified to hear matters that are likely to be heard by the dispute resolution panel. From the list of five or more persons, the parties shall select the person most readily available to hear the matter within 30 calendar days (or as soon thereafter as possible) from the date that the person is contacted by either the ARB or UP panel member. If no person from the previously selected list is available to hear the matter within 45 calendar days of being notified, the ARB and UP panel members shall contact an arbitration referral service, identify the matter(s) at issue and accept the person mutually agreed upon and most readily available from the service who is qualified to hear the matter(s) at issue. The two panel members selected by the parties shall serve as technical advisors to the third panel member, who shall be solely responsible for making the final decision.

ii. Administrative Appeals Panel Process

Unless otherwise determined that the matter(s) at issue require oral testimony, the panel shall make its decision based upon written submission of the parties. If a hearing to take testimony is determined to be necessary, the hearing shall be public. The panel shall determine the time and place of the hearing, and shall set forth the procedures to be followed at the hearing. The panel shall take all precautions necessary to preserve the confidentiality of trade secret or other confidential information, and shall consider such evidence in a closed meeting.

iii. Public Access to Administrative Appeals Panel

Third parties may submit written statements and supporting evidence to the panel regarding the matter(s) at issue before the matter(s) are taken under submission. Third parties do not have the right to intervene in this proceeding.

iv. Final Decision by Administrative Appeals Panel

The panel shall issue its final decision within 30 calendar days from the date that the matter is submitted to the panel. While either party receiving an adverse decision from the panel may seek expedited review of the decision in the Superior Court for the County of Sacramento, if the panel's decision upholds the Executive Officer's final determination of non-compliance, ARB may immediately commence the rulemaking process outlined in the opening paragraphs of this section. If judicial review is not sought, then the decision of the panel will be binding on the parties.

Each party to the proceedings outlined above shall bear its own costs and fees, with the exception that the parties agree to split all costs and fees arising from the employment of the third panel member.